85-1156

NO. 85-

Supreme Court, U.S.
FILED
DEC 30 1985
JOSEPH F. SPANIOL, JR.
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IN THE
SUPREME COURT OF THE UNITED STATES

ANTHONY SPALLATO, Administrator of the Estate of SONJA M. SPALLATO, Deceased,

Plaintiff-Petitioner

v.

UNITED STATES OF AMERICA,

Defendant-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
No. 84-2996

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Attorneys for Petitioner

JOHN C. AMBROSE,
Of Counsel

December 30, 1985

QUESTION PRESENTED

Whether the trial court clearly erred in reaching its decision that the medical testimony did not establish Guillain-Barre Syndrome which was brought about by the failure, during the bench trial, to consider all of the evidence and required a higher standard of proof than required by State law.

PARTIES TO THE PROCEEDINGS

The following parties appeared in the proceedings in the United States Court of Appeals for the Seventh Circuit:

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Appeared for Plaintiff-Appellant, ANTHONY SPALLATO, et al.

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IN THE
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Plaintiff-Petitioner

v.

UNITED STATES OF AMERICA,

Defendant-Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
No. 84-2996

Petitioner, Anthony Spallato, Administrator of the Estate of Sonja M.Spallato, Deceased, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit, entered on September 30, 1985.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit was reported as an unpublished order per circuit rule 35. It is included as Appendix A to this Petition.

JURISDICTION

The judgment and opinion of the United States Court of Appeals for the Seventh Circuit was entered on September 30, 1985. The jurisdiction of this court is invoked under 42 U.S.C. Sec. 247(b).

STATEMENT OF THE CASE

Plaintiff, Anthony Spallato, filed suit in the United States District Court for the Northern District of Illinois for personal injury, wrongful death and damages under the National Swine Flu Immunization Program Act of 1976, 42 U.S.C. Section 247(b) and the and the Federal Tort Claims Act, 28 U.S.C. Section 1346(b), et seq. The plaintiff asserted at trial that the untimely death of his wife Sonja M. Spallato, on January 9, 1977 was triggered by Guillain-Barre Syndrome which was caused by her inoculation with the swine flu vaccine on October 28, 1976.

The Plaintiff's, decedent, 37 year old Sonja Spallato was in apparent good health in 1976 when the Defendant instituted the National Swine Flu Immunization Program. Although a diabetic since childhood, she carefully monitored

her diet, medication and exercise regime. (Spallato p. 3)(9-4-84) Her father, Dr. Lovkam, was confident that Sonja's diabetes was under control because her physician always gave him good reports on her condition. (Lokvam p. 37)(9-4-84) Every three or four months Sonja was examined by Dr. Colwell, a diabetic specialist who was her personal physician for many years. (Spallato p. 11)(9-4-84)

Sonja had married Anthony Spallato in 1967 and they shared a close relationship throughout those nine years. (Spallato p. 3)(9-4-84) Frequently they traveled, played golf, hiked and enjoyed numerous social activities. (Spallato p. 4)(9-4-84) Both Anthony and Sonja were teachers. She was employed as a speech therapist with the Evanston School District at the elementary level. Anthony described his wife as an active, healthy, energetic woman who was

dedicated to her profession and equally attentive to her home life. (Spallato p. 5,9,6)(9-4-84) Aside from her many athletic pursuits she had a special interest in ballet and regularly attended dance classes.

On October 28, 1976, Sonja received a swine flu vaccination (bivalent) at the Levy Senior Citizen's Center in Evanston, Illinois. She was concerned about the influenza epidemic and wanted to protect herself against the flu. (Spallato p. 13) (9-4-84)

In late November, (about four weeks after the inoculation) Sonja told Anthony that her legs were bothering her. (Spallato p. 13, 14)(9-4-84) For instance, her habit of climbing the stairs to their third floor apartment now became a hardship. (Spallato p. 8)(9-4-84) Somehow her legs now prevented her from ambulating normally and

(Spallato p. 13, 14)(9-4-84) Sonja began using the elevator service. (Spallato p. 15)(9-4-84)

In time, Sonja found it difficult to even grasp onto a cup of coffee. (Spallato p. 16)(9-4-84) When guests came to visit, Anthony found that he would have to carry out the tray of refreshments. Soon, he began to do all the shopping himself and tended to other household chores. (Spallato p. 18)(9-4-84)

Anthony began to notice certain other changes. When Sonja had to climb any stairs she would pull herself up by holding onto the bannister. When she walked, Sonja would usually lean up against things for support. To raise herself from a sitting position, she would grasp onto a chair. (Spallato p.22)(9-4-84) All the while Anthony waited for her to complain of pain or

something, but she never did. (Spallato p. 19, 24)(9-4-84)

In early December, Sonja informed Anthony of her decision to discontinue the ballet classes. She found that she could not execute the routines or hold the positions. (Spallato p.17) (9-4-84)

During this time Sonja told her father of the increasing difficulties she was experiencing with her legs and hips. (Lokvam p. 38)(9-4-84) As Sonja was not a complainer by nature, Dr. Lovkam became concerned when he heard of this weakness. (Lokvam p. 39)(9-4-84) Seeing how she looked, (face drawn and sallow) and felt over the holidays, he insisted that she contact her physician. (Lokvam p.39) (9-4-84) When Sonja finally contacted Dr. Colwell, however, she could not get an appointment for two weeks. (Lokvam p.39, Spallato p. 24)(9-4-84)

On January 8, 1977 Sonja's condition worsened. She complained of pain in both hips and Anthony called Dr. Colwell. (Spallato p. 25)(9-4-84) That night she slept very little. The next morning Anthony dressed Sonja and carried her into Evanston Hospital. (Spallato p.27) (9-4-84)

A few hours later, while in the hospital bed, Sonja fainted away and all attempts to revive her failed. (Spallato p.28) (9-4-84) The cause of death was reported as acute myocarditis.

Sonja had not been examined neurologically in the course of her short term in the hospital. Although an autopsy was performed, it did not include an examination of her brain, spinal cord or peripheral nerves. Dr. and Mrs. Lovkam were not aware of the fact that Sonja had received the swine flu until sometime after the funeral. (Lokvam p.36)

(9-4-84) The condition of ill-being from which Sonja suffered from November 1976 until the time of her death was never diagnosed.

Dr. Neil Allen, the Plaintiff's neurologist, testified to his experience in diagnosing and treating at least thirty to fifty cases of GBS. Although a neurological examination is the best method of arriving at a diagnosis, Dr. Allen emphasized that in certain settings it is necessary to rely upon the information provided by the patient and by observers. (e.g. curbside consults) (Allen p. 12)(9-4-84)

In this instance, the information supplied by Sonja's husband and both of her parents was strong evidence to consider a diagnosis of GBS in light of the additiional information regarding the swine flu shot Sonja received prior to

the onset of her problems. (Allen, p. 13, 91)(9-4-84)

According to Dr. Allen, who relied on the NINCDS criteria, the unique feature of GBS which distinguishes it from other neuropathies is the progressive motor weakness without a lot of sensory symptoms. (Allen p. 63, 64)(9-4-84) In addition, the symmetry of the weakness (both legs and both arms) lends further support to the correctness of the diagnosis. (Allen p. 70,71)(9-4-84)

When presented with the picture of a patient who experiences progressive weakness without strong sensory symptoms, with symmetry of the weakness, and who four to eight weeks prior to the onset of such features received a swine flu vaccination, Dr. Allen concluded that the best diagnosis would be GBS. (Allen. p. 24)(9-4-84)

Dr. Lichtenstein, the Defendant's neurologist also diagnosed at least fifty cases of GBS, but treated very few of these patients. (Lichenstein p. 4,21) (9-6-84) He agreed that the outstanding characteristic of GBS is the weakness of the lower extremities. It can range from mild weakness to complete paralysis. (Lovkam p. p. 4)(9-4-84)

In his testimony, Dr. Lichtenstein set out the known causes of GBS. It generally occurs following upper respiratory infections, pulmonary infections and GI tract infections. (Lichtenstein p. 9)(9-6-84) It has also complicated surgical operations and occurs with Hodgkin's disease. Finally, GBS has been associated with vaccinations, "the most notorious was, of course, the swine flu vaccination of several years ago." (Lichtenstein p.6) (9-6-84)

When the defense presented Dr. Lichtenstein with a hypothetical portraying Sonja's condition, he found it was possible that she had GBS. But, because of her diabetes, he concluded that she more likely had diabetic neuritis. (Lichtenstein p.11,15,16) (9-6-84)

According to Dr. Lichtenstein, in order to diagnose diabetic neuritis, you only look to verify the underlying disease of diabetes mellitus. But, in diagnosing GBS, you must diagnose the syndrome itself. (Lichtenstein p. 8)(9-6-84)

On cross-examination, Dr. Lichtenstein testified that, as a rule, diabetics experience lots of sensory symptoms, including pain, loss of touch, numbness, burning and itching. (Lichtenstein p. 34)(9-6-84) He emphasized the pain. (Lichtenstein p. 37)(9-6-84) When Dr. Lichtenstein was referred to his earlier

opinion that Sonja's condition was more likely diabetic in origin, he corrected himself by stating "But, I said, I also said it could or might be a Guillain-Barre." (Lichtenstein p. 37)(9-6-84)

Dr. Lichtenstein also admitted that the swine flu shot is a reasonable cause of GBS when onset of weakness appears by the fourth week. (Lichtenstein p. 38)(9-6-84) But he chose to ignore this evidence because of Sonja's diabetes which he characterized as a "heavy illness." (Lichtenstein p. 38)(9-6-84)

In rebuttal, Dr. Allen pointed out Dr. Lichtenstein's misapprehension of Sonja's complaints of weakness. She did not exhibit or complain of tiredness which is a diffuse feeling of malaise associated with an alteration of the mental state. Instead, her complaints and manifestations were of muscle weakness which is the inability to move about normally

without some assistance. (Allen, rebuttal p. 11)(9-11-84)

Dr. Allen also stressed that the cardinal feature of GBS is motor or muscle weakness, whereas the cardinal feature of diabetic neuropathy is sensory alteration. (Allen, rebuttal p.13) (9-11-84) He also noted that Dr. Lesch referred to the medical records where it was indicated that Sonja "had a bilateral hip pain with stiffness on admission to the hospital." (Allen rebuttal p.32) (9-11-84) After reading this notation, Dr. Lesch commented that "Whether this woman had some other antecedent illness or not, I don't know". (Allen rebuttal p. 32)(9-11-84) According to Dr. Allen, bilateral hip pain is part and parcel of the root or radicular involvement in GBS (Allen rebuttal p. 33)(9-11-84) Considering the swine flu vaccine, the clear progression to GBS, Dr. Allen concluded

that this condition aggravated, promoted and influenced the death of Sonja Spallato. (Allen rebuttal p.44) (9-11-84)

At the close of trial, the court ruled in favor of the government. Although the judge indicated that Sonja may have had GBS, he considered it equally probable that she did not have GBS.

On appeal, plaintiff argued that the trial court's findings on the issue of Sonja's post-vaccinal condition were erroneous and contrary to the manifest weight of the evidence. In its Rule 35 order, rendered without benefit of argument, the appeals court affirmed the district court. The opinion glossed over plaintiff's major contentions by relying on the fact that no neurological or laboratory examination was performed on Sonja Spallato. Both in the district court and in the Court of Appeals the

fault of her post-vaccinal sufferings was summarily attributed to her diabetic condition.

REASONS FOR GRANTING THE WRIT

This Court should review the decision of the Court of Appeals which upheld the district judge's findings in this swine flu litigation without meaningfully addressing the critical issue of Sonja M. Spallato's post-vaccinal condition which plaintiff amptly demonstrated to be GBS contracted as a result of the vaccine.

Both the letter and the spirit of the Swine Flu Act 42 U.S.C. sec. 1346(b) suggest just compensation for the suffering of individuals harmed by the government sponsored vaccine program of 1976. As has been shown, the plight of diabetic persons who have contracted Guillain-Barre Syndrome (GBS) as a result of the swine flu innoculation requires special attention for the reason that GBS is manifested by symptoms similar -- but not identical -- to diabetic neuropathy.

See, generally Heyman v. United States, 506 F.Supp. 1145 (S.D. Fla. 1981).

This was just such a case. Review by this Court is necessary to remedy the failings of the Court of Appeals to address itself to these concerns which plaintiff asserted were erroneously decided at trial.

At the outset, the government's witness failed to reasonably substantiate the alternate diagnosis of diabetic neuropathy which he posited. Dr. Lichtenstein ignored the evidence and based his wavering opinion solely on the fact that Sonja M. Spallato was a diabetic. In accepting this conclusion, the trial judge likewise gave overwhelming weight to this single factor and ignored both the credible testimony of Sonja's family and medical knowledge.

In an unpublished order decided without benefit of argument, the Court of Appeals

glossed over plaintiff's argument and obscured the issue by also pointing to Sonja's pre-existing diabetes. But, the fact that Sonja died before a neurological examination was performed, or that she was a diabetic or that certain organs were effected by this disease does not justify the indifferent attitude concerning her post-vaccinal condition displayed by the government's witness, the trial court and the reviewing court.

Review is also necessary because the Court of Appeals was not convinced that certain medical testimony excluded at trial would have been highly probative. In this regard, the offer of proof demonstrates that Sonja Spallato's treating physician found her to be a healthy, active woman with no sensory problems. Such evidence would have clearly rebutted the government's alternative diagnosis of diabetic

neuropathy which is characterized by its slowly evolving processes. The rapid progression of Sonja's ailments, on the other hand, was highly indicative of GBS. Thus, the wrongful ommission of this testimony proved substantially prejudical to the plaintiff.

The Court of Appeals opined that the exclusion of the testimony of the treating physician should not have been excluded, based upon Rule 403. But surprisingly, then turned around and said that the excluded testimony would in any event was not probative and the exclusion did not seriously prejudice the plaintiff's case. It is obvious that the critical turning point in the decision of the case was whether her condition of ill being was caused by her pre-existing diabetic condition or related to the swine flu inoculation. The trial judge in excluding the evidence under 403 not

only committed error, but failed as a finder of fact to weigh all of the evidence in this most critical aspect of the case.

Review is necessary because the trial judge required a higher standard proof than was necessary when it sought to seek absolute certainty from the plaintiff's medical expert. The opinion dramatizes this, but came to the erroneous conclusion when it referred to the questioning by the trial judge, to-wit:

> "What I want to do is get your opinion, based upon a reasonable degree of medical certainty, as the mechanism that brought about the death of Mrs. Spallato."

As can be seen by the Court opinion, both the trial judge and the Court of Appeals erroneously found that the proper standard for medical evidence was used when the words "based upon a reasonable degree of medical certainty" was used in the question and underlined in the

opinion. However, the significance of the question is in the following clause where the trial judge, during his unwarranted examination of the expert, sought "the mechanism that brought about the death of Mrs. Spallato." Obviously, the government attorney did not seek such an inappropriate answer by failing to ask such a question, but more than that, the trial judge in dealing with a medical syndrome, sought absolute certainty which, of course, is beyond the abilities of an expert and beyond the standard of proof as required in the State of Illinois.

CONCLUSION

For the reasons stated above, petitioner respectfully prays that this Honorable Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in these proceedings.

Respectfully submitted,

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JOHN C. AMBROSE
Of Counsel

A P P E N D I X

JUDGMENT - WITHOUT ORAL ARGUMENT
UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
September 30, 1985

Before
Hon. WILLIAM J. BAUER, Circuit Judge
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. KENNETH F. RIPPLE, circuit Judge

ANTHONY SPALLATO, Administrator cf the Estate SONJA M. SPALLATO, Deceased, Plaintiff-Appellant,	)Appeal from the)United States)District Court)for the Northern)District of)Illinois, Eastern
No. 84-2996 vs.	)Division.)No. 80 C 1796)
UNITED STATES OF AMERICA, Defendant-Appellee.	)John F. Grady,)Judge.)

This cause came before the Court for decision on the record from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this Court entered this date.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
SUBMITTED AUGUST 28, 1985*
September 30, 1985

Before
Hon. WILLIAM J. BAUER, Circuit Judge
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. KENNETH F. RIPPLE, circuit Judge

ANTHONY SPALLATO, Administrator of the Estate SONJA M. SPALLATO, Deceased, Plaintiff-Appellant,	)Appeal from the)United States)District Court)for the Northern)District of)Illinois, Eastern)Division.
No. 84-2996 vs.	)No. 80 C 1796)
UNITED STATES OF AMERICA, Defendant-Appellee.	)John F. Grady,)Judge.

O R D E R

Plaintiff, Anthony Spallato, filed suit in the Northern District of Illinois, under the Federal Tort Claims Act, 28

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Rule 34(a), Fed. R. App. P.; Circuit Rule 14(f). No such statement having been filed, the appeal has been submitted on the briefs and record.

U.S.C. §§ 1346(b), 2671, asserting that the sudden death of his wife, Sonja Spallato, On January 9, 1977, was the result of Guillain-Barre Syndrome caused by her inoculation with swine flu vaccine on October 28, 1976. After a bench trial the district court found for the government. Plaintiff appeals. We affirm.

Plaintiff contends that the district court erred in excluding testimony from his expert witness, Dr. Allen, concerning a telephone conversation with Ms. Spallato's treating physician. Dr. Allen's testimony was to be offered in rebuttal, to indicate that Ms. Spallato's diabetes was under control, but was excluded under Rule 403, Fed. R. Evid., because of unfair surprise to the government. Two months earlier, the district court had ruled that Dr. Allen would not be allowed to testify to any basis for his opinion that was not given at his deposition, because the doctor had

stated, at the time, that he was not acquainted with the medical record. Plaintiff's offer of proof indicated that Dr. Allen, in rebuttal, was simply going to use the treating physician's statements that Ms. Spallato's diabetic condition did not contribute to her death to "support conclusively" his opinion of the "causal connection between the swine flu vaccination, the subsequent condition of GBS and her death." However, Dr. Allen did testify to his belief that diabetes was not the cause of Ms. Spallato's death, and to the mechanisms by which Guillain-Barre Syndrome was. The offer of proof indicates that Ms. Spallato's former treating physician had based his conclusion, in turn, largely on the fact that she was healthy, active, and had no clear-cut sensory problems. However, an autopsy revealed that Ms. Spallato had diabetic glomerulosclerosis,

a scarring of the kidneys that had destroyed 80 to 90 percent of her kidney function, and that her diabetes had caused a disease in the blood vessels of her retina. In light of the other evidence presented, we are not convinced that Dr. Allen's excluded testimony would have been highly probative, and its omission did not seriously prejudice plaintiff's case. While unfair surprise is not an appropriate basis for exclusion of evidence under Rule 403, see O'Rourke v. Eastern Air Lines, 730 F.2d 842, 855 n.21 (2d Cir. 1984); Fed. R. Evid. 403 advisory committee note; 1 J. Weinstein & M. Berger, Weinstein's Evidence at 403-12 to -13 (1982), the decision to exclude expert testimony for failure to comply with discovery is committed to the discretion of the district judge, Gorby v. Schneider Tank Lines, 741 F.2d 1015, 1018-1019 (7th Cir. 1984). We find no abuse of discretion here.

Plaintiff next argues that the district court held him to a higher burden of proof of causation than required by Illinois law, which provides substantive law governing this case, see Smith v. United States, 688 F.2d 476, 479 & n.7 (7th Cir. 1982). However the cases cited by plaintiff, e.g. Dixon v. Industrial Commission, 60 Ill. 2d 126, 324 N.E.2d 393 (1975); National Castings Division of Midland Ross Corporation v. Industrial Commission, 55 Ill. 2d 198, 302 N.E. 2d 330 (1973); Boston v. Illinois Industrial Commission, 125 Ill. App. 3d 789, 466 N.E.2d 625 (4th Dist. 1984), do not suggest a burden of proof less stringent than that employed in the present case. Rather, the cited cases indicate that it is for the trier of fact (there, the Illinois Industrial Commission) not a reviewing court, to resolve conflicts in the medical evidence when necessary to

make a decision. The testimony of a medical expert need not be based on absolute certainty, but only a reasonable degree of medical certainty. Frankenthal v. Grand Trunk Railroad, 120 Ill. App. 3d 409, 419, 458 N.E.2d 530, 538 (1st Dist. 1983). On the other hand, an expert is not allowed to guess or speculate. Id. The transcript of proceedings, and the lucid district court opinion , make clear that the district judge imposed the correct standard of proof. For example, in the course of Dr. Allen's rebuttal testimony the judge inquired: "What I want to do is get your opinion, based upon a reasonable degree of medical certainty, as the mechanism that brought about the death of Mrs. Spallato." [Emphasis supplied]. Consequently, we reject plaintiff's argument.

Finally, plaintiff contends that the district court was wrong in its conclusion that plaintiff had not proved that his wife suffered from Guillain-Barre Syndrome or that the syndrome had caused her death. Such findings are findings of fact, see Grover Hill Grain Co. v. Baughman-Oster Inc., 728 F.2d 784, 794 (6th Cir. 1984), which we review under the "clearly erroneous" standard of Rule 52(a), Fed. R. Civ. P. The evidence presented in this case consisted mainly of testimony of Ms. Spallato's family, concerning her condition in the weeks immediately before her death, and the conflicting conclusions of medical experts. It was undisputed that the diagnosis of Guillain-Barre is a difficult medical task, usually done with the aid of a neurological examination. However, no neurological or laboratory examination was performed on Ms.

Spallato. Dr. Allen agreed that he was basing his diagnosis exclusively on the fact that she had received a swine flu shot and on the testimony of family members. Dr. Allen also agreed that Guillain-Barre and diabetic neuropathy share many common characteristics. It was undisputed that the immediate cause of Ms. Spallato's death was a myocardial infarction. Dr. Lesch testified that diabetics are extremely susceptible to atherosclerosis, which causes ninety-two percent of myocardial infarctions in the country. Heart attacks, he stated, are one of the two leading causes of death in diabetics. The district court found the testimony of the government's medical experts to be more credible than the testimony of Doctor Allen. We conclude that the factual findings of the district court, which are for the most part based on a resolution of conflicts in the

medical evidence and determinations of the credibility of expert witnesses, are not clearly erroneous. See Anderson v. City of Bessemer, 105 S.Ct. 1504, 1512-13 (1985); Jastremski v. United States, 737 F.2d 666, 671 (7th Cir. 1984).

The decision of the district court is AFFIRMED.

NO. 85-

IN THE
SUPREME COURT OF THE UNITED STATES

ANTHONY SPALLATO, Administrator
of the Estate of Sonja M. Spallato,
Deceased,

Plaintiff-Petitioner

v.

UNITED STATES OF AMERICA,

Defendant-Respondent

NOTICE OF FILING

TO: Anton Valukas, U.S. Attorney
219 South Dearborn Street
Chicago, Illinois 60603

Office of the Solicitor General
U.S. Department of Justice
Main Justice Building
Washington, D.C. 20530

PLEASE TAKE NOTICE that on the 30th day of December, 1985, I filed with the Clerk of the United States Supreme Court for presentation to the Judges the Petition For Writ of Certiorari on behalf of Plaintiff-Petitioner, ANTHONY SPALLATO, et al.

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STATE OF ILLINOIS)
) SS.:
COUNTY OF C O O K)

AFFIDAVIT OF MAILING

I, JOHN C. AMBROSE, after first being duly sworn upon oath depose and say:

1. That I am the Attorney of Record for the Plaintiff-Petitioner, ANTHONY SPALLATO, Administrator of the Estate of Sonja M. Spallato, Deceased, in the Petition for Writ of Certiorari;

2. That pursuant to the Rules of Practice of the Supreme Court of the United States, I certify the forty-five (45) copies of the Petition For Writ of Certiorari and Appendix were mailed to the Clerk of the United States Supreme Court on December 30, 1985 to be filed as of December 30, 1985;

3. That pursuant to the Rules of Practice of the Supreme Court of the United States, I certify that three (3) copies of the Petition For Writ of Certiorari and Appendix were mailed to:

(a) Anton Valukas, U.S. Attorney
219 South Dearborn Street
Chicago, Illinois 60603

(b) Office of the Solicitor General
U.S. Department of Justice
Main Justice Building
Washington, D.C. 20530

on December 30, 1985 by placing the same in an envelope with the above-mentioned names and addresses and depositing said envelopes in the U.S. Mail in Chicago, Illinois on December 30, 1985.

JOHN C. AMBROSE

SUBSCRIBED and SWORN to
before me this 30th day
of December, 1985.

NOTARY PUBLIC